IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1367 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/02/2003 in WP No: 4489 of 1993 on the file of the High Court.)

Between:

1 The Government of AP, Home Department, rep. by its Secretary, A.P. Secretariat,
Hyderabad
2 The Superintendent, Central Prison, Chanchalguda, Hyderabad
3 The Jail Doctor, Central Prison, Chanchalguda, Hyderabad
4 Mr. Jacob, Jail Compounder, Central Prison, Chanchalguda, Hyderabad
5 The Superintendent, Osmania General Hospital, Hyderabad

..... APPELLANT(S)

AND

1 G.P. Chenna Reddy, S/o. G. Nagi Reddy,
R/o. Sirigiri Village, Veldurthi Mandal,
Guntur District
2 The Director, Nizam Orthopacdic (NIMS),
Panjagutta, Hyderabad

.....RESPONDENT(S)

Counsel for the Appellant: GP FOR HOME

Counsel for the Respondent No1: Mr.K.Bala Gopal

Counsel for the Respondent No.2: Mr.M.R.K. Choudary

The Court made the following :

HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HONOURABLE SRI JUSTICE K.C.BHANU

W.A.No.1367 of 2003

JUDGMENT: (Per K.C.B.,J)

This writ appeal is directed against the judgment, dated 28.2.2003 passed by the learned single Judge of this Court in W.P.No.4489 of 1993 whereunder, the respondents are directed to pay compensation of Rs.50,000/- to the petitioner jointly and severally within a period of four weeks from the date of receipt of a copy of the order.

The brief facts that are necessary for the purpose of disposal of the writ appeal may be depicted as follows:

The respondents 1 to 5 in the writ petition are the appellants herein. The 1st respondent herein filed W.P.No.4489 of 1993 stating that he was convicted and sentenced to undergo imprisonment for life by the learned Sessions Judge, Guntur on 13.12.1984 in a murder case; and upon conviction, he was sent to Central Prison, Rajahmundry. Subsequently, he was transferred to Central Prison, Chanchalguda, Hyderabad on his request. Therefore, he had been undergoing sentence since 13.12.1984. He underwent sentence for more than 10 years and by the time of filing of the writ petition, he was on parole granted by the 1st respondent. In the month of December 1990, while the petitioner was undergoing sentence in Central Prison, Hyderabad, he fell sick and therefore, approached the Jail Doctor for treatment. The Jail Doctor i.e. 3rd respondent prescribed some medicines which included one injection. The Jail Compounder, who is the 4th respondent, gave the petitioner an injection. After the needle of the syringe was inserted on his left shoulder and the

medicine was injected into his body and even before needle was removed, his left arm became dysfunctional. He was not able to move his left arm ever since then. Despite the Jail Doctor prescribed some medicines, there was no improvement in the petitioner. The medical record pertaining to the petitioner is in the possession of the 2nd respondent. After his left arm became dysfunctional, he was referred to Osmania General Hospital for treatment for about one month. Though he was given treatment, there was no improvement in him. He was operated upon on 5.9.1991 and 17.9.1991 yet there was no improvement in him. He was also referred to Nizam's Institute of Medical Sciences, Hyderabad but of no avail. Because of dysfunctional of his left arm since December 1990, he was put to irreparable loss and damage. The injury caused to him was due to recklessness and negligence of both the Jail Doctor and the Jail Compounder who gave injection without taking minimum care causing radial nerve injury due to needle. He further stated that he was aged about 44 years and he was due for release in a few years and thereafter, he could be in a position to earn not less than Rs.25,000/- per month by engaging himself in agricultural operations. Therefore, he estimated the damages upto Rs.1,00,000/-.

The 2nd respondent filed counter affidavit stating that the petitioner was convicted by the Sessions Judge and has been undergoing sentence and was also transferred to Central Prison, Chanchalguda, Hyderabad from Central Prison, Rajahmundry. It is contended that he was released on parole for one month on 26.12.1988. He was due to report to the Jail on 26.1.1989, but he did not return to the Jail in time. Thereafter, the petitioner was apprehended by the police and brought to Jail on 26.10.1990 after Parole overstay. After few days, he attended the Jail dispensary on 1.11.1990 for treatment of the injury to his left arm, which he is said to have sustained outside the prison during parole period. For this complaint, he had attended the Jail dispensary several times. As per the statement of the convict, he received an injection in the month of December 1990. As per record of O.P. Register, he was given injection in the months of November

and December and it gave an history of exposure during his stay on parole outside. However, giving of injection to his left arm does not arise as he was having previous injury in the left arm. It is further stated that the convict did not attend the Jail dispensary from 5.12.1990 till the first week of February, 1991. During the end of February, 1991, he started complaining of weakness to his left wrist joint for which he was referred to Osmania General Hospital and the Orthopaedic Surgeon gave him necessary treatment. Four weeks thereafter, he was referred to Nizam's Institute of Medical Sciences. After receipt of "Nerve Conduction Studies" report, the convict was referred to Osmania General Hospital, where he was treated surgically by Orthopaedic Surgeon and was discharged on 12.6.1991. Follow up action was taken in the Osmania General Hospital. It is further stated that dysfunction of left hand as alleged by the petitioner was not caused by the injection given in the Jail dispensary and the damage of radial nerve. The Jail Compounder took whatever minimum care required to be taken. Therefore, the question of negligence and recklessness does not arise. Therefore, the petitioner wanted to withdraw the writ petition stating that his arm was functioning normally and he is able to work at Prisoners Agricultural Colony. He was released on 12.6.1996 from Prisoner's Agricultural Colony, Moula Ali, where he spent three years as an Agricultural Operator. If he was unfit for work, he should have been sent back to the closed Jail i.e. Central Prison, Hyderabad. Therefore, this indicates that his arm and health condition were good and the question of paying compensation does not arise, as there is no negligence in providing medical care to the petitioner. Hence, the 2nd respondent has prayed to dismiss the writ petition.

Upon perusing the material available on record, the learned single Judge of this Court came to the conclusion that as it is a case of recklessness and negligence of the employees, the State cannot claim any immunity and therefore, all the respondents are jointly and severally liable to pay compensation of Rs.50,000/-. Aggrieved by the same, the respondents 1 to 5 have preferred this appeal.

The learned Government Pleader for Home appearing for the appellants has contended that there is evidence to link the present condition of the petitioner's left wrist with any defective treatment given to him; and the petitioner himself got injured outside the prison while on parole; and there are several disputed questions of fact involved that elaborate treatment was given to the petitioner and there was no negligence on the part of the Jail Doctors in giving injection Therefore, he prays to set aside the judgement under appeal.

On the other hand, the learned counsel appearing for the 1st respondent has contended that if really the petitioner sustained injury outside the prison, the same would have been noted at the time of arresting him and no documents to that effect are filed by the Jail authorities to show that at the time of arrest after overstay on parole, the injuries if any should be noted in the register. As those records are in the custody of the appellants, they purposefully withheld the register and therefore, it can be safely presumed that the petitioner sustained injury while undergoing treatment in the prison; and because of the negligent attitude of the Doctor and also the Compounder, who gave injection to the petitioner, the left hand was dysfunctional immediately after giving injection; and the learned Judge, after elaborate consideration of the case, rightly granted compensation and there are no grounds to interfere with the judgment under appeal.

The test of medical negligence lies in default to exercise the ordinary care and caution, which is expected of a prudent medical man in the circumstances of a given case. The duty to exercise such a care and caution including reasonable use of his faculties of sight and intelligence to observe and appreciate danger or threatened danger of injury is undoubtedly either on the Doctor or on the Compounder. If he fails to do so and such failure is the proximate cause of injury, then, he is guilty of negligence.

As seen from the allegations in the counter affidavit, the petitioner

was admitted into Central prison on 21.10.1990 as he was apprehended by the police because of overstay on parole. It is also admitted in the counter that on 1.11.1990, the writ petitioner attended the Jail dispensary for an injury to his left arm. If really the petitioner sustained injury to his left arm outside the prison definitely the same would have been mentioned in the register maintained by the Jail authorities when he was brought to the Jail on 26.10.1990. If the register was produced, the truth would have been come out, but the respondents did not produce the register. Therefore, for non-production of register, an adverse inference can be drawn. It is specifically stated by the writ petitioner that in the month of December, 1990, he approached the Jail Doctor for treatment and the appellant-3rd respondent prescribed some medicines including one injection, thereafter, the 4th appellant gave an injection. After needle of syringe was inserted into his left shoulder the medicine was injected into his body and before needle was removed, his left arm became dysfunctional. The said statement of fact is not denied or disputed by filing counter affidavit either by the 3rd appellant or the 4th appellant. The 2nd respondent, who filed counter affidavit in the writ petition, was not admittedly present at the time of giving injection. Therefore, it can be reasonably presumed that the left arm of the writ petitioner became dysfunctional after the injection was given. Thereafter, he was treated in the Osmania General Hospital for about one month and two operations were performed on his left hand, but of no use. When the writ petition was pending, the petitioner was referred to Nizam's Institute of Medical Sciences, Hyderabad on 27.6.2002 for expert's opinion with regard to the percentage of disability sustained by the petitioner. The Medical Board consisting of three Associate Professors each from Neurology, Orthopaedics and General Medicine Departments, opined that the petitioner's wrist drop due to radial nerve involvement and the petitioner has residual deficit and the current disability is 10%. With regard to dysfunction of arm immediately after giving injection by the Compounder i.e. 4th appellant, the Jail Doctor i.e. the 3rd appellant has not taken proper

care and caution, therefore, we are of the opinion that the act of complaint against the Doctor and the Jailor indicated lack of adequate care and caution on their part. So, from the expert's opinion as referred to by this Court, it is a clear case where the petitioner has got wrist drop due to radial nerve involvement and residual deficit causing 10% disability. Basing on the said disability, estimating the compensation at the rate of Rs.50,000/- cannot be said to be unreasonable or on higher side. Admittedly, after dysfunction of left arm, the petitioner was admitted in the Osmania General Hospital for about four weeks and took treatment as in-patient, thereafter, he took treatment for another four weeks in Nizam's Institute of Medical sciences and again he was referred to Osmania General Hospital, wherein he underwent two surgical operations. After discharge from the hospital as in-patient, he was taken to Osmania General Hospital on several occasions. So, the nature of pain and suffering experienced by the writ petitioner cannot be underestimated.

Having regard to these aspects, the learned single Judge rightly granted Rs.50,000/- towards compensation to the 1st respondent-petitioner. In our considered opinion, the order under appeal does not suffer from any incurable legal infirmities so as to call for interference by this Court. There are absolutely no merits in this writ appeal.

Accordingly, this writ appeal is dismissed. In the circumstances of the case, there shall be no order as to costs.

(B.SUDERSHAN REDDY,J.)

15th September, 2004.

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(K.C.BHANU,J.)

bcj

To

1 The Secretary, Government of AP, Home Department, A.P. Secretariat, Hyderabad
2 The Superintendent, Central Prison, Chanchalguda, Hyderabad
3 The Jail Doctor, Central Prison, Chanchalguda, Hyderabad
4 Mr. Jacob, Jail Compounder, Central Prison, Chanchalguda, Hyderabad
5 The Superintendent, Osmania General Hospital, Hyderabad

6 The Director, Nizam Orthopacdic (NIMS), Panjagutta, Hyderabad

7 Two C.Cs. to the Government Pleader for Home, High Court Buildings, Hyderabad (OUT)

8 Two C.D. copies